

## ORDINANCE NO. 2300

**AN ORDINANCE TO ESTABLISH BUSINESS LICENSES AND REGULATIONS AS CHAPTER 13 OF THE LEXINGTON CITY CODE; PROVIDE REGULATION OF VENDORS; TO REPEAL ALL ORDINANCES OR SECTIONS OF ORDINANCES IN CONFLICT HEREWITH; AND TO PROVIDE FOR AN EFFECTIVE DATE AND FOR PUBLICATION IN PAMPHLET FORM.**

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF LEXINGTON, NEBRASKA, AS FOLLOWS:

**Section 1.** That Chapter 13 of the Lexington City Code is hereby amended to read as follows:

### CHAPTER 13

#### BUSINESS LICENSES AND REGULATIONS

Sec. 13-1	Vendors
Sec. 13-1.1	Purpose and Intent
Sec. 13-1.2	Definitions
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#### **Sec. 13-1 Vendors**

##### **Sec. 13-1.1 Purpose and intent.**

It is the intent of the council in enacting this article:

- (1) To serve and protect the health, safety and welfare of the general public;
- (2) To establish a uniform set of rules and regulations that are fair and equitable;
- (3) To develop a vending system that will enhance the overall appearance and environment along public streets, pedestrian ways, and other public properties;
- (4) To provide economic development opportunities to small entrepreneurs in the city; and,
- (5) To promote stable vendors who will enrich the city's ambiance and be assets to public security.

The regulations contained in this article are not intended to prohibit or hamper speech that is protected by the First Amendment of the United States Constitution, but merely to regulate specific activities that are commercial in nature.

### **Sec. 13-1.2 Definitions.**

When used in this article, the following words, terms, and phrases, and their derivations, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**Conveyance** includes any public or privately owned vehicle, method or means of transporting people, bicycles, motorized or non-motorized vehicle, handcart, pushcart, lunch wagon or any other device or thing, whether or not mounted on wheels;

**Goods, wares, merchandise** shall include, but not be limited to, fruits, vegetables, farm products or provisions, dairy products, fish, game poultry, meat, plants, flowers, appliances, wearing apparel, jewelry, ornaments, art work, toys, cosmetics and beauty aids, health products, medicines, household needs or furnishings, food of any kind, whether or not for immediate consumption, confections or drinks; except that this article shall not apply to those residents of Dawson County, Nebraska, who are selling or delivering for sale home-raised fruits and vegetables;

**Intersection** means the convergence of two or more public ways and, for purposes of this article, proximity measurements will be taken from the outermost perimeters of said converging public ways;

**Motor vehicle** means any vehicle used for displaying, storing, or transporting articles for sale by a vendor which is required to be licensed and registered by the state department of motor vehicles of any state;

**Private Space** shall include privately owned property, whether developed or undeveloped, which is properly zoned for retail sales.

**Public space** includes all city-owned parks and city-owned property within street rights-of-way, including any roadways and sidewalks;

**Public way** means all areas legally open to public use such as public streets, sidewalks, roadways, highways, parkways, alleys, parks, as well as the areas surrounding and immediately adjacent to public buildings;

**Pushcart** means any wheeled vehicle approved by the City and in accordance with this article designed for carrying property and for being pushed by a person without the assistance of a motor or motor vehicle;

**Sidewalk** means all areas legally open to public use as a pedestrian public way between the curb line and the legal building line of the abutting property;

**Special event** means any occasion including but not limited to fairs, shows, exhibitions, city-wide celebrations, and festivals taking place within a specifically defined area within the jurisdiction of the City of Lexington, Nebraska, for a specific period of time;

**Stand** means any showcase, table, bench, rack, handcart, pushcart, stall or any other fixture or device that is used for the purpose of displaying, exhibiting, carrying, transporting, storing, selling or offering for sale any food, beverages, goods, wares or merchandise upon a sidewalk;

**Street** means all that area legally open to public use as public streets, and sidewalks, roadways, highways, parkways, alleys and any other public way;

**Vendor** means any person, traveling by foot, wagon, vehicle or any other type of conveyance from street to street carrying, conveying, or transporting goods, wares, or merchandise and offering and exposing them for sale, or making sales and delivering articles to purchasers; or who, without traveling from place to place, exhibits, displays, sells or offers for sale such products from a wagon, handcart, pushcart, motor vehicle, conveyance or from his person while on the public ways of the City of Lexington, Nebraska, or upon private space. A "Vendor" also includes any street vendor, hawker, huckster, itinerant merchant, transient vendor, door-to-door salesperson; and,

**Vehicle** means every device in, upon, or by which a person or property may be transported or drawn upon a street or sidewalk, including, but not limited to, devices moved by human power.

### **Sec. 13-1.3 License required.**

It shall be unlawful for any person to engage in the business of vending unless he or she has first obtained a license from the City. All licenses shall be issued according to regulations established by the City. Each conveyance or location must obtain separate license.

### **Sec. 13-1.4 Application for license.**

The application for a vending license shall contain all information relevant and necessary to determine whether a particular license may be issued, including but not limited to:

- (1) The applicant's full name, permanent address, telephone number and proof of identity;
- (2) A brief description of the nature, character and quality of goods, wares or merchandise to be offered for sale;
- (3) The specific location, if any, in which the vendor intends to conduct business, and the length of time during which it is proposed the business will be conducted;
- (4) If the applicant is employed by another, the name and address of the person, firm, association, organization, company or corporation;
- (5) If a motor vehicle is to be used, a description of the vehicle together with the motor vehicle registration number and license number; and,
- (6) A sales tax permit as required by Neb. R.S. § 77-2705.
- (7) If the applicant intends to operate from a private space, the location, and written permission of the record title owner of the private space.

### **Sec. 13-1.5 Health inspection certificate.**

Any application for a vending license to engage in the sale of prepared food or beverages shall be required to furnish and maintain a certificate of health inspection from the Nebraska Department of Agriculture. The applicant's equipment shall be subject to inspections at the time of application and at periodic intervals thereafter.

### **Sec. 13-1.6 Issuance of license and identification badges.**

The City shall deny any application for license when:

- (a) it shall appear that a license shall be in conflict with any of the provisions of this Chapter;
- (b) when the applicant shall not provide the required information;
- (c) when a license shall be in conflict with a license previously issued for a specific location; or
- (d) when it appears that the application is for a private space that does not have adequate access or an improved surface which will provide ground-water runoff and allow for litter removal.

The applicant shall be notified in writing by the City of the city's decision to issue or deny the vending license no later than thirty (30) days after the applicant has filed a completed application with the City.

Each license shall show the name and address of the licensee, the type of license issued, the kind of goods to be sold, the amount of the license fee, the date of issuance, the license number, the expiration date, an identifying description of any vehicle or conveyance used by the licensee plus, where applicable, the motor vehicle registration number.

In addition to the vending license and any other permit required by this article, the City shall issue a numbered identification badge to each vendor. Vendor must provide the city with names of employees or other individuals who will help operate the business. If a badge becomes damaged or obscured, the vendor shall return it to the city and receive another badge.

All licenses, permits and identification badges issued under this section are valid for the term of the license fee paid by the vendor unless suspended or revoked and shall be both non-assignable and non-transferable.

### **Sec. 13-1.7 License fees.**

Any vendor granted a vending license under this article shall pay a license fee as established by resolution.

### **Sec. 13-1.8 Display of identification badges and other permits.**

Any license or permit issued by the City shall be carried with the licensee whenever he/she is engaged in vending. Identification badges and certificates of health inspection shall also be properly and conspicuously displayed at all times during the operation of the vending business.

An identification badge shall be deemed to be properly displayed when it is attached to the outer garment of the vendor and clearly visible to the public and law enforcement officials. A certificate of health inspection shall be deemed to be properly displayed when attached to the vending pushcart, vehicle, stand or other conveyance, and clearly visible to the public and law enforcement officials.

### **Sec. 13-1.9 Notification change.**

All vendors shall assure that a current and correct name, residence address, mailing address and telephone number are on file with the City. Whenever either the name or address provided by a licensed vendor on his or her application for a vending license changes, the licensee shall notify the City in writing within seven days of such change and provide the same with the name change or address change. The vendor must notify the City whenever he or she changes the nature of the vending operation, such as adding prepared food merchandise when food was previously not offered.

### **Sec. 13-1.10 Exemptions.**

The provisions of this article do not apply to:

- (1) Goods, wares, or merchandise temporarily deposited on the sidewalk in the ordinary course of delivery, shipment or transfer;
- (2) The placing and maintenance of unattended stands or sales devices for the sale, display or offering for sale of newspapers, magazines, periodicals and paperbound books;
- (3) The distribution of free samples of goods, wares and merchandise by any individual from his person;
- (4) Produce grown in Dawson County, Nebraska;
- (5) Recognized, established charitable organizations which have a business location in Dawson County, Nebraska;
- (6) Vendors participating in special events;
- (7) Merchants offering goods for sale from a permanent structure in an appropriate zoning area of the City of Lexington;
- (8) Fireworks Stands licensed and regulated by the State of Nebraska.

### **Sec. 13-1.11 Claims of exemption.**

Any person claiming to be legally exempt from the regulations set forth in this article, or from the payment of a license fee, shall cite to the City Clerk the statute or other legal authority under which exemption is claimed and shall present to the City Clerk proof of qualification for such exemption. The City Clerk shall respond within 30 days.

### **Sec. 13-1.12 Littering and trash removal.**

Vendors shall keep the sidewalks, roadways and other spaces adjacent to their vending sites or locations clean and free of paper, peelings and refuse of any kind generated from the operation of their businesses. All trash or debris accumulating within 100 feet of any vending stand shall be collected by the vendor and deposited in a trash container.

Persons engaged in food vending shall affix to their vending station, vehicle, pushcart or other conveyance a receptacle for litter that shall be maintained and emptied regularly and marked as being for litter.

### **Sec. 13-1.13 Prohibited conduct.**

No person authorized to engage in the business of vending under this article shall do any of the following:

- (1) Obstruct traffic signals or regulatory signs;
- (2) Stop, stand or park any vehicle, pushcart or another other conveyance upon any street for the purpose of selling during the hours when parking, stopping and standing have been prohibited by signs or curb markings;
- (3) Leave any conveyance unattended at any time; or store, park, or leave such conveyance in a public space overnight;
- (4) Use an conveyance that, when fully loaded with merchandise, cannot be easily moved and maintained under control by the licensee, his employee, or an attendant;
- (5) Sound any device that produces a loud and raucous noise or operate any loudspeaker, public address system, radio, sound amplifier, or similar device to attract public attention, or otherwise violate noise regulations of the City Code;
- (6) Conduct his business in such a way as would restrict or interfere with the ingress or

egress of the abutting property owner or tenant, create a nuisance, increase traffic congestion or delay, constitute a hazard to traffic, life or property, or obstruct adequate access to emergency and sanitation vehicles; and,

- (7) Sell any goods, wares or merchandise within districts or on streets that have been or shall be hereafter so designated by the City Council, to-wit: any public space or private space located within 400 feet of the centerline of Plum Creek Parkway, from the Right-of-way of Interstate Highway 80, North to Prospect Road.

#### **Sec. 13-1.14 Penalties.**

The penalty for violating any provision of this article or any other applicable section of the Lexington City Code shall be, in addition to any other sanctions provided, a fine not exceeding \$500.00 for each offense together with revocation or suspension of the vendor's license. Each violation shall be evidenced by a separate written notice presented at the time of citation for the offense. Each day of violation shall be deemed a separate offense.

Any business activity in violation of this article is further declared to be a nuisance as being against the public health, safety and welfare, and in addition to any penalty imposed, the Court may enter an order of abatement as part of the judgment of that case.

#### **Sec. 13-1.15 Suspension and revocation of license.**

In addition to the penalties contained in this article, any license issued under this article may be suspended or revoked for any of the following reasons:

- (1) Fraud, misrepresentation or knowingly false statement contained in the application for the license;
- (2) Fraud, misrepresentation or knowingly false statement in the course of carrying on the business of vending;
- (3) Conducting the business of vending in any manner contrary to the conditions of the license; or
- (4) Conducting the business of vending in such a manner as to create a public nuisance, cause a breach of the peace, constitute a danger to the public health, safety, welfare or morals, or interfere with the rights of abutting property owners.

The City shall provide written notice of the suspension or revocation in a brief statement setting forth the complaint, the grounds for suspension or revocation, and notifying the licensee of his or her right to appeal. Such notice shall be mailed to the address shown on the license holder's application by certified mail, return receipt requested.

If the city revokes a vending license or permit, the fee already paid for the license or permit shall be forfeited. A person whose license or permit has been revoked under this section may not apply for a new license for a period of one year from the date that the revocation took effect.

#### **Sec. 13-1.16 Appeals.**

If the City denies the issuance of a license or permit, suspends or revokes a license or permit, or orders the cessation of any part of the business operation conducted under the license or permit, the aggrieved party may appeal the City's decision to the City Manager.

The filing of an appeal stays the action of the City in suspending or revoking a license or permit or any part of the business operation being conducted under such license or permit until the City Manager makes a final decision, unless the City Building Inspector determines that continued operation of the vending business constitutes an imminent and serious threat to the public health or safety, in

which case the City shall take or cause to be taken such action as is necessary to immediately enforce the suspension, revocation or order.

**Sec. 13-1.17 Renewals.**

A vending license may be renewed, provided an application for renewal and license fees are received by the city no later than the expiration date of the current license. Any application received after that date shall be processed as a new application. The City shall review each application for renewal, and upon determining that the applicant is in full compliance with the provisions of this article, shall issue a new license.

**Sec. 13-1.18 Construction.**

No part of this article or the article itself shall be construed to be an amplification or derogation of the rights or responsibilities of abutting property owners. Any remedies, rights or obligations provided to such property owners or their successors in interest under the law of real property or their successors in interest under the law of real property or the laws of the State of Nebraska shall be in addition to the remedies, rights, obligations or penalties provided hereunder.

**Sec. 13-1.19 Advertising signs.**

All signs advertising a permitted vending business hereunder must conform to the following requirements:

- (1) A maximum of two signs are allowed per vending location;
- (2) Each sign allowed may not exceed 16 square feet in area;
- (3) The signs must be attached to the trailer, tent, table or other display area of the licensed vendor; and,
- (4) Free-standing signs are not permitted.

**Section 2.** All Ordinances or sections of Ordinances in conflict herewith are hereby repealed.

**Section 3.** This Ordinance shall be published in pamphlet form and take effect as provided by law.

Passed and approved this 26<sup>th</sup> day of July, 2011.

City of Lexington, Nebraska

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President of the Council

ATTEST:

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Deputy City Clerk